IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO.1998 OF 2004

IN

CRIMINAL APPEAL NO..... of 2004

Bombay Municipal Corporation .. Applicant

versus

Firoz Gulam Hussain & Anr. .. Respondents

...

Mrs.Teja Katdare for the applicant.

Mr.S.L. Ahuja for the respondent no.1.

CORAM : V.M. KANADE, J

DATED : 22nd December 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the applicant and the learned counsel appearing on behalf of the respondent no.1.

2. The Corporation has filed this appeal

challenging the judgement and order passed by Metropolitan Magistrate, 42nd Court, Shindewadi Dadar in C.C.No.7821/ML/01. By the said judgement and order dated 6th November 2003, the learned Magistrate was pleased to acquit the accused of the offences with which he was charged. The prosecution case is that licence Inspector of the Corporation Mr.Gaikwad had visited the shop and found that one Mr.Das was present in the shop. He was unable to produce the licence or permit issued by the Corporation. He informed the Inspector that the respondent was the owner of the shop. Inspection report was prepared by the Inspector and thereafter, the present prosecution was lodged against the respondent accused.

2. The learned counsel appearing on behalf of the appellant has taken me through the judgement and order of the trial Court and also the evidence adduced by the prosecution. PW no.1 Vishwanath Gaikwad has stated that he visited the premises on 18.6.2001 and had noticed that repairing and servicing of TV/Radio/VCR was carried out. One Mukesh Das was present. He informed the Inspector that Firoz Gulam was the owner of the shop. In the cross-examination, this witness has admitted that he had visited the

premises only once on 18.6.2001. Further, he was not in a position to explain whether the authority letter which was issued was signed by the Addl. Municipal Commissioner. From this evidence it can be seen that no efforts were taken by him to ascertain whether the respondent infact was the owner of the shop. Merely on the statement of one Mukesh Das he had proceeded to prosecute the respondent. Thus, the prosecution has not proved beyond reasonable doubt that the accused had committed the said offence. The trial court had correctly appreciated the evidence on record and has acquitted the accused. I do not see any reason to interfere with the said judgement and order passed by the trial Court.

3. Leave refused. Appeal is dismissed.

V.M. KANADE, J